IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

OP.No. 8882 of 1999(G)

PETITIONER:

SMT.RUKIA, W/O.K.E.GAFOOR,
PALAKKATTU PARAMBU ,
VI/1313, MATTANCHEWRRY, COCHIN-2.

BY ADV. SRI.K.N.BALAKRISHNAN NAIR

RESPONDENTS:
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1. **UNION OF INDIA, REP.BY THE SECRETARY, TO GOVERNMENT, MINISTRY OF FINANCE (DEPARTMENT) OF REVENUE) SECRETARIAT, NEW DELHI.**

3. **THE APPELLATE TRIBUNAL, REP.BY ITS REGISTRAR, APPELLATE TRIBUNAL FOR FORFEITED PROPERTY, IVTH FLOOR, LOK NAYAK BHAVAN, KHAN MARKET, NEW DELHI- 110 003.**

3. **THE COMPETENT AUTHORITY, SMUGGLERS AND FOREIGN EXCHANGE, MANIPULATOR, (FORFEITURE OF PROPERTY) ACT 1976, UTSAU NO.64/1, G.N. CHETTY ROAD, T.NAGAR, MADRAS 600 017.**

4. **THE DISTRICT COLLECTOR, ERNAKULAM.**

BY ADV. SRI.K.RAMAKUMAR
SRI.P.S.SREEDHARAN PILLAI, SCGSC
SRI.JOHN VARGHESE, ASSISTANT SG

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/12/2006, ALONG WITH OP NO. 9512 OF 2000 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH, J.

O.P.Nos.8882/1999 & 9512/2000

Dated 6th December, 2006.

J U D G M E N T

O.P.9512/2000

The writ petition is filed mainly with the following prayers :-

> (i) To call for the entire records leading to the passing of the direction to surrender/deliver possession of the house property, measuring 5.26 cents in Sy.No.79/1 and 87/2 in Mattancherry village, together with a building with a plinth area of about 900 sq.feet (approximate) together with further additions, if any at the address VI/1313, 'Zalina Manzil', Pallakkattuparambu, near syndicate bank, Mattancherry, Cochin-2 in file No.OCA/MDS/2635 dated 17.3.99 of the 4th respondent, the competent authority, Madras and to issue a writ of certiorari or any other writ, order or direction quashing the same.
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> (ii) To call for the entire records leading to the passing of the order of detention of the petitioner, ie., order No.18369/SS.A1/82 Home dated 20.5.82 of the 2nd respondent, the Spl.Secretary to Government, and to issue writ of certiorari or any other writ, order or direction and quash the same."

As far as the second prayer is concerned, it is submitted that the petitioner has already served the term. As far as the first relief is concerned, it is stated in the counter affidavit filed by the 4th respondent at paragraph 4 that "The fact that the impugned property is in the joint name of the petitioner and his wife has come to the knowledge of the 4th respondent only on receiving the letter dated 26.3.2006 from my counsel and as the matter is

pending before this Hon'ble Court no fresh notice has been issued to the petitioner and this respondent is ready to issue notice to the petitioner and to hear him and to pass appropriate orders." Accordingly, the writ petition is disposed of directing the petitioner to appear before the 4th respondent on 8.2.2007, on which date, the 4th respondent will afford an opportunity for hearing to the petitioner and pass appropriate orders in accordance with law in the matter, within another two months.

O.P.8882/1999

Petitioner is the wife of the petitioner in O.P.No.9512/2000. She is aggrieved by the proceedings initiated against the property under the SAFEMA Act. In the counter affidavit filed on behalf of the competent authority, it is stated as follows :-

> "Aggrieved by the above order, the petitioner filed an appeal before the 2nd respondent, who after due process of law, vide his order dated 5.2.1999 in F.P.A.No.14/MDS/94, has confirmed forfeiture order made by the third respondent in respect of the house property and the two bank deposits held by the petitioner. For the movable asset, i.e., Leyland Lorry bearing Registration No.KEF 2406 the second respondent has considered and allowed the source of a bank loan to the tune of Rs.1.5 lakhs claimed by the petitioner and directed the 3rd respondent to consider giving an option to pay the fine in lieu of forfeiture for the unexplained investment by invoking Section 9 of the Act. The 2nd respondent further directed the 3rd respondent if he desires, to evaluate afresh the claims of the petitioner in respect of the remaining sources for that property. The petitioner filed the present Original Petition before this Hon'ble Court and obtained an interim stay vide order in C.M.P.No.14782/99 in O.P.8882/99 and stayed further proceedings."

The writ petition filed by the husband has been disposed of directing him to appear before the competent authority, the 4th respondent in the said writ petition and the third respondent herein, on 8.2.2007. The petitioner herein also will appear before the competent authority on 8.2.2007 and the said authority will pass appropriate orders in accordance with law, after affording an opportunity for hearing to the petitioner, within another two months. It is made clear that in that view of the matter, I have not considered the writ petition on merits and it will be open to the petitioner to take all available contentions before the competent authority. The interim order passed by this Court in C.M.P.No.14782/99 will continue till such time.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J

O.P.Nos.8882/99 & 9512 of 2000

J U D G M E N T

Dated 6th December, 2006.